

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN MONTUE,

Plaintiff,

No. CIV S-02-0638 FCD KJM P

vs.

EDWARD S. ALAMEIDA, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed under 42 U.S.C. § 1983. In findings and recommendations issued November 15, 2002, the magistrate judge recommended that the complaint be dismissed because plaintiff had “struck out” within the meaning of the Prison Litigation Reform Act. 28 U.S.C. § 1915 (g).

In his amended objections to the findings and recommendations and in a motion for reconsideration, plaintiff alleged that he is African-American, that he has been compelled to take his morning and evening meals with “rival gang members, racist skinheads, racist southerners and racist northerners;” that this policy was designed to create tension among racial groups; that racist southerners attacked black inmates in the cafeteria on December 12, 2002; that had he been in the cafeteria on that day, he would have been attacked as well; that the racist southerners will attack any black simply because of skin color. Am. Objections (filed Dec. 19,

2002) at 1-3.

The district court vacated the findings and recommendations in light of the additional information in the amended objections, concluded that plaintiff had made a sufficient showing he was under “under imminent danger of serious physical injury” and directed plaintiff to file a second amended complaint.

In the second amended complaint, plaintiff repeats his account of the melee between blacks and “racist southerners” on December 12, 2002. In light of the district court’s order of February 5, 2003, the court finds the second amended complaint to state a claim against defendants Butler and Campbell.

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee in effect at the time of filing of his action, \$150.00. 28 U.S.C. §§ 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding month’s income credited to plaintiff’s prison trust account. These payments shall be collected and forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff’s account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff’s request for leave to proceed in forma pauperis is granted.

2. Plaintiff is obligated to pay the statutory filing fee of \$150.00 for this action.

The fee shall be collected and paid in accordance with this court’s order to the Director of the California Department of Corrections filed concurrently herewith.

3. Service is appropriate for the following defendants: Butler and Campbell.

4. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons,

1 an instruction sheet and a copy of the complaint filed February 14, 2003.

2 5. Within thirty days from the date of this order, plaintiff shall complete the
3 attached Notice of Submission of Documents and submit the following documents to the court:

4 a. The completed Notice of Submission of Documents;

5 b. One completed summons;

6 c. One completed USM-285 form for each defendant listed in number 3
7 above; and

8 d. Three copies of the endorsed complaint filed February 14, 2003. .

9 6. Plaintiff need not attempt service on defendants and need not request waiver of
10 service. Upon receipt of the above-described documents, the court will direct the United States
11 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4
12 without payment of costs.

13 DATED: May 11, 2005.

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16 UNITED STATES MAGISTRATE JUDGE
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